

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 538 be amended to read as follows:

- 1 Page 1, line 6, after "of" insert "**a political subdivision or**".
- 2 Page 2, strike line 1.
- 3 Page 2, line 2, strike "(E)" and insert "**(D)**".
- 4 Page 2, line 15, after "contract" insert ", **grant, loan,**".
- 5 Page 2, between lines 24 and 25, begin a new line block indented
- 6 and insert:
- 7 "**(7) 'Covered person' refers to a person described in section**
- 8 **2.5 of this chapter.**".
- 9 Page 2, line 25, strike "(7)" and insert "**(8)**".
- 10 Page 2, line 25, strike "a state" and insert "**an**".
- 11 Page 2, line 31, strike "(8)" and insert "**(9)**".
- 12 Page 2, line 35, strike "(9)" and insert "**(10)**".
- 13 Page 2, line 36, after "option," insert "**grant, loan**".
- 14 Page 2, line 41, strike "a state" and insert "**an**".
- 15 Page 3, line 1 strike "state".
- 16 Page 3, line 6, before "officer" strike "state".
- 17 Page 3, line 6, before "employee." strike "state".
- 18 Page 3, line 7, strike "(10)" and insert "**(11)**".
- 19 Page 3, between lines 15 and 16, begin a new line block indented
- 20 and insert:
- 21 "**(12) 'Officer' refers to a state officer or an elected official of**
- 22 **a political subdivision.**".
- 23 Page 3, line 16, strike "(11)" and insert "**(13)**".
- 24 Page 3, line 20, strike "(12)" and insert "**(14)**".

- 1 Page 3, line 24, strike "(13)" and insert "**(15)**".
- 2 Page 3, line 25, strike "(14)" and insert "**(16)**".
- 3 Page 3, line 30, strike "(15)" and insert "**(17)**".
- 4 Page 3, line 39, strike "(16)" and insert "**(18)**".
- 5 Page 4, line 5, strike "(17)" and insert "**(19)**".
- 6 Page 4, line 6, strike "(18)" and insert "**(20)**".
- 7 Page 4, between lines 7 and 8, begin a new paragraph and insert:
- 8 "SECTION 2. IC 4-2-6-2 IS AMENDED TO READ AS FOLLOWS
- 9 [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) There is created a state ethics
- 10 commission.
- 11 (b) The commission is composed of ~~five (5)~~ **seven (7)** members
- 12 appointed by the governor.
- 13 (c) ~~No Not~~ more than ~~three (3)~~ **four (4)** commission members shall
- 14 be of the same political party. A person who:
- 15 (1) holds an elected or appointed office; ~~of the state;~~
- 16 (2) is employed by ~~the state;~~ **an agency;** or
- 17 (3) is registered as a lobbyist under IC 2-7-2-1;
- 18 may not be a member of the commission. **At least two (2) members of**
- 19 **the commission must have knowledge of the operation of political**
- 20 **subdivisions.**
- 21 (d) The governor shall designate one (1) member of the commission
- 22 as the chairman. Each appointment to the commission is for a period
- 23 of four (4) years. A vacancy shall be filled by the governor for the
- 24 unexpired term.
- 25 ~~(d)~~ (e) The governor and state budget agency shall provide such
- 26 rooms and staff assistance as the commission may require."
- 27 Page 4, line 11, strike "state".
- 28 Page 4, between lines 22 and 23, begin a new paragraph and insert:
- 29 "SECTION 4. IC 4-2-6-3 IS AMENDED TO READ AS FOLLOWS
- 30 [EFFECTIVE JULY 1, 1999]: Sec. 3. The commission shall adopt rules
- 31 under IC 4-22-2 establishing a code of ethics for ~~the conduct of state~~
- 32 ~~business.~~ **covered persons.** The code of ethics must be consistent with
- 33 state law."
- 34 Page 4, line 26, strike "four (4)" and insert "**five (5)**".
- 35 Page 4, line 31, strike "state officers, employees, and special state
- 36 appointees." and insert "**covered persons.**".
- 37 Page 4, line 32, strike "four (4)" and insert "**five (5)**".
- 38 Page 4, line 38, strike "state officers, employees, or special state".
- 39 Page 4, line 39, strike "appointees," and insert "**covered persons,**".
- 40 Page 4, line 39, after "or" insert "**state**".
- 41 Page 5, strike lines 19 through 23.
- 42 Page 5, line 18, delete ":" and insert "**a covered person; or**".
- 43 Page 5, line 33, strike "four (4)" and insert "**five (5)**".
- 44 Page 5, line 39, strike "a".
- 45 Page 5, line 40, strike "state" and insert "**an**".
- 46 Page 6, line 34, strike "state officers, employees, or special state".

1 Page 6, line 35, strike "appointees," and insert "**covered persons**,".

2 Page 6, line 39, strike "state".

3 Page 7, line 6, strike "state".

4 Page 7, line 7, strike "officers, employees, or special state
5 appointees," and insert "**covered persons**,".

6 Page 7, between lines 32 and 33, begin a new paragraph and insert:

7 "SECTION 6. IC 4-2-6-5 IS AMENDED TO READ AS FOLLOWS

8 [EFFECTIVE JULY 1, 1999]: Sec. 5. ~~No state~~ (a) **An** officer or
9 employee ~~shall~~ **may not** solicit or accept compensation, other than that
10 provided for by law for such office or employment for the performance
11 of ~~his~~ duties. ~~it shall be unlawful for any~~

12 (b) **A** person, other than state officers or employees performing their
13 duties in making payments to state officers or employees as provided
14 by law, ~~to may not~~ pay or offer to pay, any ~~state~~ officer or employee
15 any compensation for the performance of ~~his~~ official duties.

16 SECTION 7. IC 4-2-6-7 IS AMENDED TO READ AS FOLLOWS

17 [EFFECTIVE JULY 1, 1999]: Sec. 7. ~~A state~~ **An** officer or employee
18 may not receive compensation:

19 (1) for the sale or lease of any property or service which
20 substantially exceeds that which the ~~state~~ officer or employee
21 would charge in the ordinary course of business; and

22 (2) from any person whom ~~he~~ **the officer or employee** knows or,
23 in the exercise of reasonable care and diligence should know, has
24 a business relationship with the agency in which the ~~state~~ officer
25 or employee holds a position.".

26 Page 7, line 41, strike "an" and insert "**a state**".

27 Page 9, between lines 41 and 42, begin a new paragraph and insert:

28 "SECTION 9. IC 4-2-6-9 IS AMENDED TO READ AS FOLLOWS

29 [EFFECTIVE JULY 1, 1999]: Sec. 9. ~~A state~~ **An** officer or employee
30 may not participate in any decision or vote of any kind in which the
31 ~~state~~ officer or the employee, or that individual's spouse or
32 unemancipated children, ~~has~~ **have** a financial interest.

33 SECTION 10. IC 4-2-6-11 IS AMENDED TO READ AS

34 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) This section
35 applies only:

36 (1) to a former ~~state~~ officer or former employee; and

37 (2) during the period that is twelve (12) months after the date the
38 former ~~state~~ officer or former employee had responsibility for the
39 particular matter.

40 (b) As used in this section, "legislative matter" has the meaning set
41 forth in IC 2-2.1-3-1.

42 (c) As used in this section, "particular matter" means:

43 (1) an application;

44 (2) a business transaction;

45 (3) a claim;

46 (4) a contract;

- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(d) A former ~~state~~ officer or former employee may not represent or assist a person regarding a particular matter involving a specific party or parties:

- (1) that was under consideration by the agency that was served by the ~~state~~ officer or employee; and
- (2) in which the officer or employee participated personally and substantially through:
 - (A) a decision;
 - (B) an approval;
 - (C) a disapproval;
 - (D) a recommendation;
 - (E) giving advice;
 - (F) an investigation; or
 - (G) the substantial exercise of administrative discretion.

(e) An appointing authority or ~~state~~ officer of the agency that was served by the former ~~state~~ officer or former employee may waive application of this section if the appointing authority or ~~state~~ officer determines that representation or assistance of a former ~~state~~ officer or former employee is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the commission.

(f) This section does not prohibit an agency from contracting with a former ~~state~~ officer or employee to act on a matter on behalf of the agency.

SECTION 11. IC 4-2-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12. If the commission finds a violation of this chapter, a rule adopted under this chapter, or any other statute or rule governing official conduct of ~~state officers, employees, or special state appointees~~ **covered persons** in a proceeding under section 4 of this chapter, the commission may take any of the following actions:

- (1) Impose a civil penalty upon a respondent not to exceed the greater of:
 - (A) three (3) times the value of any benefit received from the violation; or

- 1 (B) ten thousand dollars (\$10,000).
- 2 (2) Cancel a contract.
- 3 (3) Bar a person from entering into a contract with any agency for
- 4 a period specified by the commission. The period specified by the
- 5 commission may not exceed two (2) years from the date the action
- 6 of the commission is effective."
- 7 Page 10, line 1, strike "a".
- 8 Page 10, line 2, strike "state" and insert "**an**".
- 9 Page 10, line 8, strike "a state" and insert "**an**".
- 10 Page 10, after line 38, begin a new paragraph and insert:
- 11 "SECTION 14. IC 35-44-1-3 IS AMENDED TO READ AS
- 12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) A public servant
- 13 who knowingly or intentionally:
- 14 (1) has a pecuniary interest in; or
- 15 (2) derives a profit from;
- 16 a contract, **grant, loan,** or purchase connected with an action by the
- 17 governmental entity served by the public servant commits conflict of
- 18 interest, a Class D felony.
- 19 (b) This section does not prohibit **any of the following:**
- 20 (1) A public servant from receiving compensation for:
- 21 ~~(1) (A)~~ services provided as a public servant; or
- 22 ~~(2) (B)~~ expenses incurred by the public servant as provided by
- 23 law.
- 24 (2) **A public servant or a dependent of a public servant**
- 25 **receiving a grant or loan from the governmental entity served**
- 26 **by the public servant over the award of which the public**
- 27 **servant exercised no immediate, actual discretion.**
- 28 (c) This section does not prohibit a public servant from having a
- 29 pecuniary interest in or deriving a profit from a contract, **grant, loan,**
- 30 or purchase connected with the governmental entity served under any
- 31 of the following conditions:
- 32 (1) If the:
- 33 (A) public servant is not a member or on the staff of the
- 34 governing body empowered to contract, **grant, loan,** or
- 35 purchase on behalf of the governmental entity;
- 36 (B) functions and duties performed by the public servant for
- 37 the governmental entity are unrelated to the contract, **grant,**
- 38 **loan,** or purchase; and
- 39 (C) public servant makes a disclosure under subsection (d)(1)
- 40 through (d)(6).
- 41 (2) If the contract, **grant, loan,** or purchase involves utility
- 42 services from a utility whose rate structure is regulated by the
- 43 state or federal government.
- 44 (3) If the public servant:
- 45 (A) is an elected public servant or a member of the board of
- 46 trustees of a state supported college or university; and

- (B) makes a disclosure under subsection (d)(1) through (d)(6).
- (4) If the public servant:
- (A) was appointed by an elected public servant or the board of trustees of a state supported college or university; and
- (B) makes a disclosure under subsection (d)(1) through (d)(7).
- (5) If the public servant:
- (A) acts in only an advisory capacity for a state supported college or university; and
- (B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.
- (6) If the public servant:
- (A) is employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent; and
- (B) makes a disclosure under subsection (d)(1) through (d)(6).
- (7) If the public servant is under the jurisdiction of the state ethics commission as provided in IC 4-2-6-2.5 and obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract, **grant, loan,** or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:
- (A) ~~granted~~ **given** to the public servant before action is taken in connection with the contract, **grant, loan,** or purchase by the governmental entity served; or
- (B) sought by the public servant as soon after the contract, **grant, loan,** or purchase as the public servant becomes aware of the facts that give rise to a question of conflict of interest.
- (d) A disclosure required by this section must:
- (1) be in writing;
- (2) describe the contract, **grant, loan,** or purchase to be made by the governmental entity;
- (3) describe the pecuniary interest that the public servant has in the contract, **grant, loan,** or purchase;
- (4) be affirmed under penalty of perjury;
- (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity prior to final action on the contract, **grant, loan,** or purchase;
- (6) be filed within fifteen (15) days after final action on the contract, **grant, loan,** or purchase with:
- (A) the state board of accounts; and
- (B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract, **grant, loan,** or

- 1 purchase; and
- 2 (7) contain, if the public servant is appointed, the written approval
- 3 of the elected public servant (if any) or the board of trustees of a
- 4 state supported college or university (if any) that appointed the
- 5 public servant.
- 6 (e) The state board of accounts shall forward to the state ethics
- 7 commission a copy of all disclosures filed with the board under
- 8 IC 16-22-2 through IC 16-22-5, IC 16-23-1, or this section.
- 9 (f) The state ethics commission shall maintain an index of all
- 10 disclosures received by the commission. The index must contain a
- 11 listing of each public servant, setting forth the disclosures received by
- 12 the commission made by that public servant.
- 13 (g) A public servant has a pecuniary interest in a contract, **grant**,
- 14 **loan**, or purchase if the contract, **grant**, **loan**, or purchase will result or
- 15 is intended to result in an ascertainable increase in the income or net
- 16 worth of:
- 17 (1) the public servant; or
- 18 (2) a dependent of the public servant who:
- 19 (A) is under the direct or indirect administrative control of the
- 20 public servant; or
- 21 (B) receives a contract, **grant**, **loan**, or purchase order that is
- 22 reviewed, approved, or directly or indirectly administered by
- 23 the public servant.
- 24 (h) It is a defense in a prosecution under this section that the public
- 25 servant's interest in the contract, **grant**, **loan**, or purchase and all other
- 26 contracts, **grants**, **loans**, and purchases made by the governmental
- 27 entity during the twelve (12) months before the date of the contract,
- 28 **grant**, **loan**, or purchase was two hundred fifty dollars (\$250) or less.
- 29 (i) Notwithstanding subsection (d), a member of the board of
- 30 trustees of a state supported college or university, or a person appointed
- 31 by such a board of trustees, complies with the disclosure requirements
- 32 of this chapter with respect to the member's or person's pecuniary
- 33 interest in a particular type of contract or purchase which is made on
- 34 a regular basis from a particular vendor if the member or person files
- 35 with the state board of accounts and the board of trustees a statement
- 36 of pecuniary interest in that particular type of contract or purchase
- 37 made with that particular vendor. The statement required by this
- 38 subsection must be made on an annual basis.
- 39 (j) This section does not apply to members of the governing board
- 40 of a hospital organized or operated under IC 16-22-1 through
- 41 IC 16-22-5 or IC 16-23-1.
- 42 (k) As used in this section, "dependent" means any of the following:
- 43 (1) The spouse of a public servant.
- 44 (2) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a
- 45 public servant who is:
- 46 (A) unemancipated; and

- 1 (B) less than eighteen (18) years of age.
- 2 (3) Any individual more than one-half (1/2) of whose support is
- 3 provided during a year by the public servant."
- 4 Renumber all SECTIONS consecutively.
(Reference is to ESB 538 as printed March 23, 1999.)

Representative Liggett